

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**CASE NO. 8:04CR199**

**Plaintiff,**

**VS.**

# MEMORANDUM AND ORDER

**BILLY D. DAVIS,**

**Defendant.**

This matter is before the Court on the Clerk's memorandum regarding in forma pauperis status on appeal (Filing No. 185) and the notice of appeal filed by the Defendant, Billy D. Davis (Filing No. 184).

On December 2, 2005, Davis was sentenced to 360 months imprisonment after a jury found him guilty of conspiring to distribute or possess with intent to distribute 50 grams or more of a mixture or substance containing cocaine base, powder cocaine, or both. On August 9, 2006, the Eighth Circuit affirmed his conviction and sentence. The Eighth Circuit also denied Davis's petition for rehearing and petition for rehearing en banc. On February 26, 2007, the Supreme Court denied Davis's petition for a writ of certiorari. This Court summarily denied Davis's claims raised in three motions filed under 28 U.S.C. § 2255. This Court and the Eighth Circuit denied Davis a certificate of appealability. The Supreme Court denied Davis's petition for a writ of certiorari.

In light of Amendment 706 and its changes to the crack cocaine sentencing guidelines, on May 15, 2008, this Court granted Davis's motion to reduce his sentence. His sentence was reduced to 324 months. Davis appealed this decision to the Eighth Circuit. On November 30, 2009, Davis filed a motion to dismiss his case for lack of "geographical" jurisdiction. The Court denied his motion for lack of jurisdiction, as Davis's appeal of the

order reducing his sentence was then pending before the Eighth Circuit. On February 4, 2010, the Eighth Circuit affirmed this Court's order reducing Davis's sentence. On March 15, 2010, Davis appealed from the order denying his motion to dismiss. This Court concluded that Davis was not entitled to in forma pauperis status on appeal because his appeal from the dismissal order was untimely. The Eighth Circuit granted Davis's voluntary dismissal of his appeal from the dismissal order.

On April 23, 2010, Davis moved to resubmit his motion to dismiss his case for lack of jurisdiction. The Court denied the motion, stating that his Judgment was affirmed and his case is no longer pending. Davis now appeals from this order and, therefore, his potential in forma pauperis status is in question.

Federal Appellate Rule 24 provides that a party who is permitted to proceed in forma pauperis at the district court level or is financially unable to fund a defense may proceed on appeal in forma pauperis unless the district court "certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding." Fed. R. App. 24(a)(3)(A).

Davis's case is no longer pending in this or any other court and, therefore, he has no basis for an appeal. Therefore, this Court certifies that his appeal is not taken in good faith and no support exists for allowing him to proceed in forma pauperis with his latest appeal.

IT IS ORDERED:

1. The Defendant is not entitled to proceed in forma pauperis on appeal; and
2. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 25<sup>th</sup> day of May, 2010.

BY THE COURT:

S/Laurie Smith Camp  
United States District Judge